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21 November 2002

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Qwest Communications International, Inc. Colorado/Idaho/Iowa/Nebraska/North Dakota/Montana/Washington/Wyoming/Utah, WC Docket No. 02-314

Dear Ms. Dortch:

On November 20, 2002, the undersigned, together with Megan Doberneck, Michael Zulevic, and Harry Pliskin of Covad Communications Company, made an *ex parte* presentation to William Maher, Chief, Carol Mattey, Deputy Chief, William Dever, Aaron Goldschmidt, and Michael Carowitz, all of the Wireline Competition Bureau. The purpose of the meeting was to discuss Covad's serious concerns over Qwest's discriminatory pricing of the unbundled high frequency portion of the loop and Qwest's failure to show that it provides competitors with non-discriminatory access to loop qualification information. Covad herewith provides additional responses to staff questions regarding Qwest's failure to make the requisite evidentiary showing that it provides non-discriminatory access to loop information.

As Covad explained during its presentation, Covad has repeatedly raised its need for pre-order access to MLT testing as a remedy to the significant deficiencies in Qwest's OSS for loop makeup information.[1] Covad has raised these concerns on the record in both of Qwest's previous federal 271 application proceedings, as well as Qwest's current 271 application proceeding.[2] Put simply, Qwest has failed to meet its required burden for establishing that it provides competitors with non-discriminatory access to loop makeup information. KPMG's testing of Qwest's OSS for loop makeup information patently failed to examine Qwest's systems under the appropriate standard. Even if KPMG's

[1] *See* Covad Comments in WC Docket No. 02-148 at 13-25; Covad Reply Comments in WC Docket No. 02-148 at 8-14; Covad Comments in WC Docket No. 02-189 at 23-38; and Covad Reply Comments in WC Docket No. 02-189 at 22-25.

[2] *See, e.g.,* Covad Reply Comments in WC Docket No. 02-314 at 2-27.

testing is accepted, the only thing that testing can establish by its very terms is that competitors obtain access to the same information Qwest's retail personnel access at the pre-ordering stage. As Qwest knows, however, this is a lower standard than the one Qwest is required to meet, as established by the Commission in previous section 271 proceedings. Specifically, the Commission has made clear:

> [T]he relevant inquiry is not whether [the BOC's] retail arm has access to such underlying information but whether such information exists anywhere in [the BOC's] back office and can be accessed by any of [the BOC's] personnel.[3]

Under this standard, the information Qwest's retail personnel use to pre-qualify loops for DSL service is irrelevant to the Commission's determination. The only legally relevant inquiry is whether Qwest makes available to competitors all of the loop information available to any of its personnel, retail or back office, in the same time and manner it is available to them. The Commission previously applied this standard to require Verizon to re-file its section 271 application for Massachusetts with an improved pre-order process for access to the loop-specific loop makeup information contained in the LFACS database.[4] In its order on Verizon's Massachusetts application, the Commission again made clear that Verizon was required to provide competitors with access to all loop makeup information in its back office, regardless of whether that information was used or accessed by Verizon's retail personnel.[5] Because KPMG's testing of Qwest's loop information OSS fails to meet the high standard established by the Commission in previous section 271 proceedings, neither Covad nor the Commission can have any confidence that Qwest provides competitors with access to all of the loop makeup information accessible by any Qwest personnel in Qwest's back office systems. Without such a showing, Qwest's applications for 271 authorization remain noncompliant with the standards established in the Commission's previous 271 orders, and cannot be granted.

In its reply comments in this proceeding, Covad explained in detail how new evidence uncovered in the Minnesota 271 hearings indicates that Qwest personnel do, in fact, have access to additional back office sources of loop information not made available to competitors. The documentary evidence in the Minnesota proceeding established that Qwest employees have direct access to LFACS. No CLECs have such access to LFACS or even mediated access to the entirety of the LFACS data.[6] The Minnesota record also disclosed that Qwest employees responsible for provisioning both wholesale and retail loops can access information that will determine whether loops are incorrectly statused in

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[3] *See, e.g., Application by SBC Communications Inc., et al., for Provision of In-Region, Inter-LATA Services in Kansas and Oklahoma,* CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, at para. 121.

[4] *See Application by Verizon New England Inc., et al., for Provision of In-Region, Inter-LATA Services in Massachusetts,* CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, at para. 57.

[5] *See id.* at para. 54.

[6] The loop qualification database (LQDB) contains an extract of the information in LFACS, but not all of it.

LFACS, the source of the information underlying the RLDT. CLECs have no ability, at any time, to access information that will determine whether loops are statused incorrectly in LFACS.

The evidence in Minnesota also demonstrated that, as recently as a July 17, 2002, Qwest was reminding its retail employees that loop qualification information might be inaccurate and that additional steps are required to confirm whether the loop can support xDSL service. Of course, what these additional steps are has not been disclosed to CLECs and certainly not been made available to them. The Minnesota record further contains information showing that Qwest's "DSL Team" maintains loop makeup records (that specifically address bridged tap and load coils) in Arizona that are used to support the Qwest DSL effort but which, according to the document, appear not to be included in LFACS or available to CLECs seeking to provide xDSL service.

Finally, Covad uncovered evidence during the Minnesota proceeding that Qwest uses a "shadow" process by which the load resource and allocation center ("LRAC") submit loop makeup updates. Of course, once uncovered by Covad, Qwest now admits to that shadow process, but claims that the LRAC updates flow to the LPC, which is "officially" responsible for updating LFACS.[7] The troubling fact is, however, that until caught by Covad, Qwest flatly denied that any such process could or ever would be used to update LFACS. This is thus the second time that Qwest has had to own up to the existence of other processes (the first being the pre-delivery MLT run by the QCCC on CLEC loops) after its statements have been shown to be untrue.

Because of these obvious deficiencies in Qwest's evidentiary showing, in its previous filings Covad has requested that the Commission require Qwest to undergo an immediate audit of its loop information OSS. Covad has also requested that Qwest be required to provide competitors with pre-order access to MLT testing as a remedy for Qwest's failure to make the requisite evidentiary showing. As explained in Covad's November 4, 2002, *ex parte* letter, pre-order MLT testing is an extremely valuable source of information about the capabilities of a specific cable pair to support advanced services using line sharing. Specifically, pre-order MLT testing establishes the diagnostic characteristics of the loop, such as:

- Test OK, open, foreign voltage, etc.
- AC and DC signatures in Kilo Ohms
- Capacity balance
- Loop length from the Central Office
- Longitudinal Balance.[8]

[7] *See* Qwest Ex Parte, Nov. 7, 2002, pp. 9-10.

[8] *See* Letter from Praveen Goyal, Covad Communications, to Marlene Dortch, Federal Communications Commission, in WC Docket 02-314, dated November 4, 2002.

In two ex parte letters dated November 7 and November 15, 2002, Qwest attempts to dismiss Covad's need for pre-order access to the information that MLT testing would provide.[9] Covad addresses each of Qwest's arguments in turn. Qwest characterizes the MLT test as superfluous to its RLDT pre-qualification tool. In particular, Qwest argues that the additional categories of information contained in the MLT are not required for pre-qualification of DSL loops.[10] Of course, this is merely because Qwest arbitrarily labels most of these categories of information as maintenance and repair information, and therefore *ipso facto* not required to provision DSL.[11] Qwest's sleight of hand in labeling this information "maintenance and repair" information cannot, however, be a basis for denying Covad's right to access this information for pre-order purposes, to which this information is clearly relevant. For example, the notion that tip and ring imbalance, ground conditions, foreign voltages, and open conditions are not relevant to the pre-order determination of whether or not DSL can be successfully provisioned on a cable pair is simply absurd. It should be obvious that Covad would not place an order for a UNE loop if Covad had pre-order access to information under any of these categories indicating that the loop would not support DSL.[12] Similarly, Qwest labels the "electrical characteristics" of the loop maintenance and repair information. Yet the electrical characteristics of a loop (e.g., resistance, circuit loss, metallic noise, power influence, capacity balance, longitudinal balance, and metallic loop length) are directly relevant to a determination of whether DSL can be successfully provisioned on a loop. Qwest's simply labeling MLT information "maintenance and repair" information does not transform it from being relevant for loop pre-qualification. In addition, the most obvious benefit of the pre-order MLT is that it tests the loop over which service will actually be provisioned at the time of provisioning, which Qwest itself recognizes since, as discovered during the Minnesota proceedings, Qwest uses an MLT when it determines the loop qualification information was inaccurate and it needs to assess the actual condition of the loop and any issues associated with that facility.

Additionally, the Commission should completely discount Qwest's blanket assertion that Covad does not pre-qualify loops prior to submitting orders. In fact, because UNE line shared loops come with no technical guarantees that the delivered loops will support DSL services and because Qwest does no testing whatsoever of line

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[9] *See* Letter from R. Hance Haney, Qwest, to Marlene Dortch, Federal Communications Commission, in WC Docket 02-314, dated November 7, 2002 (*Qwest November 7 ex parte*); Letter from R. Hance Haney, Qwest, to Marlene Dortch, Federal Communications Commission, in WC Docket 02-314, dated November 15, 2002 (*Qwest November 15 ex parte*).

[10] *See* Qwest November 7 ex parte at 3-5.

[11] *See id.* at 4-5 and fn. c.

[12] In this connection, Covad notes that, when placing an order for a line shared loop, it is placing an order for the high frequency portion of a loop that is already in service for voice. Thus, the loop over which Covad's DSL service would be provided would be the very same cable pair over which voice was already being provided.

shared loops to confirm loop quality and characteristics prior to loop delivery[13], Covad relies exclusively on loop pre-qualification, using both the Raw Loop Data wire center files as well as the Raw Loop Data Tool, to assure itself that it will be able to successfully provision DSL services over to a particular end user prior to placing an order for a UNE line shared loop. Not surprisingly, therefore, Covad's business practice is to pre-qualify every line shared loop prior to placing an order for that loop. Qwest's blanket assertion that Covad does not "use the loop qualification tools prior to placing an order" is grossly misleading – and simply wrong.[14] The Commission should also disregard Qwest's blanket assumption that the MLT is unnecessary to pre-qualify a data loop over which voice service is currently being provided.[15] Many of the faults in a loop that are detectable through an MLT test would cause a much more significant degradation of data services in the high-frequency portion of the loop than analog voice services in the low-frequency portion. Furthermore, data services require much shorter loop lengths than voice services do. Thus, the mere fact that voice service is being provisioned over a loop does nothing to satisfy the need for an accurate and complete set of information for loop pre-qualification. Otherwise, there would never be a need for Covad (or Qwest, for that matter) to pre-qualify line shared loops in the first place.

Qwest also argues that for most loops, its RLDT contains MLT-generated loop length information, and that the RLDT contains actual loop length information from its engineering records.[16] Of course, Qwest's characterization ignores what Covad has repeatedly already explained – that the information provided by a pre-order, loop-specific MLT test is vastly superior to the information in Qwest's RLDT database. MLT test results are delivered in real-time, indicating the current status of the loop. Because Qwest's loop plant is subject to changing conditions – for example, environmental changes, human intervention, and aging – the MLT provides a more accurate and up-to-date picture of loop plant condition than the static information contained in Qwest's RLDT database. Moreover, as Covad has explained in its previous filings, while the loop lengths provided by an MLT test are highly relevant pieces of information for the provision of DSL services, the MLT also delivers additional pieces of information besides loop length. As explained above and in Covad's previous filings, these additional pieces of information can be vital in the determination of whether or not to order a particular loop. Furthermore, Qwest neglects to mention that, even for the MLT-generated loop length information contained in the RLDT, that information is inferior to the metallic loop length information that would be generated by a loop-specific MLT test. The MLT-generated loop lengths in the RLDT reflect the loop length of a single loop at a

[13] Qwest does not test the physical layer in the outside plant for line shared loops prior to delivery. That is, during the installation process, Qwest will test for continuity within the central office (using the router test), and for the existence of bridged tap and load coils. At no point, however, does Qwest perform any tests to determine the loop makeup or characteristics in the outside plant.

[14] *See* Qwest November 7 ex parte at 13.

[15] *See* Qwest November 15 ex parte at 5.

[16] *See* Qwest November 15 ex parte at 1-2.

Qwest serving area interface (SAI). Qwest's RLDT simply assumes that the metallic loop length of one loop is identical to the loop lengths of every other loop at the same SAI. This is hardly equivalent to a loop-specific metallic loop length for an individual loop.

As Covad has repeatedly shown throughout the course of Qwest's federal 271 application proceedings, Qwest has clearly failed to meet its evidentiary burden for obtaining section 271 authorization. The only evidence Qwest has brought forward to demonstrate that its loop information OSS is checklist compliant is the results of KPMG's testing; as already explained, that testing falls by its very terms. Without an independent third party test of Qwest's loop information OSS, all the Commission is left with is Qwest's word that its OSS is checklist compliant.[17] Given what we already know about Qwest's attempts to hide information about its MLT testing capabilities from Commission staff, the Commission cannot pass Qwest's 271 applications on this record alone. As Covad has previously explained, the only way to remedy the clear deficiencies in the evidentiary record brought forward by Qwest is to require Qwest to undergo an immediate audit of its loop information OSS and to require Qwest to provide pre-order access to MLT testing. In the absence of such measures, Qwest's applications for 271 authorization must not be approved.

The twenty-page limit does not apply as set forth in DA 02-2438.

Respectfully submitted,

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[17] *See, e.g.,* Qwest November 15 ex parte at 2-3. Qwest's simple assertion that it has made available to competitors all information relevant to loop qualification can hardly pass for a sufficient evidentiary record.